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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,535	01/28/2002	Marion Hackenthal	10660-59US (10933P4)	3705

570 7590 10/31/2002

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.  
ONE COMMERCE SQUARE, SUITE 2200  
2005 MARKET STREET  
PHILADELPHIA, PA 19103

EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/31/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

10/058,535

Applicant(s)

HACKENTHAL ET AL.

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 April 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers filed under 35 U.S.C. 119 (a)-(d) based on an application filed in Germany on July 29, 1999. Applicant has not complied with the requirements of 37 CFR 1.63(c), since the submitted foreign priority document has a different application number than the foreign priority application number cited in the oath or declaration. Specifically, the examiner notes that the foreign priority application number in the oath is 19935083.3, whereas the submitted priority document has the application number 19935083.5. Therefore, it is unclear to the examiner which foreign application number is correct. A new oath or declaration is required in the body of which the present application should be identified by application number and filing date. Appropriate correction and/or clarification is required.

### ***Specification***

2. The use of the trademark Optigel™ WX on page 5, line 7 has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

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3. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. The phrase "pH value of less than about 6" in claim 1 renders the claim vague and indefinite. The phrase "less than about" renders the claim indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the phrase "less than about". It is unclear what values are encompassed by the phrase "less than about". The examiner suggests that this phrase should be changed to "less than". "Claims reciting "less than about" are invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity

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is covered by the term about.” See MPEP 2173.05(b). Appropriate correction and/or clarification is required.

7. The phrase “at least about 20%” in claim 2 renders the claim vague and indefinite. The phrase “at least about” renders the claim indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the phrase “at least about”. It is unclear what values are encompassed by the phrase “at least about”. The examiner suggests that this phrase should be changed to either “at least” or “about”. “Claims reciting “at least about” are invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term about.” See MPEP 2173.05(b). Appropriate correction and/or clarification is required.

8. The phrase “the abrasive agent comprises **substantially entirely** organic material” in claim 3 renders the claim vague and indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the phrase “substantially entirely”. Does a composition which contains 85% of an organic abrasive and 15% by weight of an inorganic abrasive meet the “substantially entirely organic material” limitation? Furthermore, the specification does not contain guidelines describing what numerical values are encompassed by the phrase “substantially entirely”. Appropriate correction and/or clarification is required.

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9. The phrase “not more than about” in claims 4 and 5 renders the claims vague and indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the phrase “not more than about”. It is unclear what values are encompassed by the phrase “not more than about”. The examiner suggests that this phrase should be changed to either “not more than” or “less than”. “Claims reciting “not more than about” are invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term about.” See MPEP 2173.05(b). Appropriate correction and/or clarification is required.

10. The phrase “the organic material is **predominantly present**” in claims 8 and 9 renders the claims vague and indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the phrase “predominantly present”. Does a composition which contains 80% of the organic material particles within a range of 10-1000 micrometers (claim 8) or a range of 100-200 micrometers (claim 9) meet the “predominantly present as particles in a size range...” limitation? Furthermore, the specification does not contain guidelines describing what numerical values are encompassed by the phrase “predominantly present”. Appropriate correction and/or clarification is required.

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11. Instant claims 6-7 and 10-11 are rejected under 35 U.S.C. 112, second paragraph, for being dependent upon a claim with the above addressed 112 problem.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Massaux et al, U.S. Patent No. 5,849,105.

Massaux et al, U.S. Patent No. 5,849,105, discloses with sufficient specificity a liquid crystal composition comprising 1-20% by weight of a cosurfactant, 1-30% by weight of a magnesium salt of an alkyl benzene sulfonate surfactant, 1-20% by weight of an ethoxylated nonionic surfactant, 0.1-2.5% by weight of an unsaturated fatty acid, 0.02-6% by weight of a perfume and 0.1-10% by weight of an abrasive (col. 4, lines 35-50). It is further taught by Massaux et al with sufficient specificity that the abrasive material is selected from the group consisting of amorphous hydrated silica (i.e. a mineral particle), polyethylene powder particles, and mixtures thereof (col. 8, line 66-col. 9, line 3), and that the pH of the liquid crystal

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formulations is from 4.5-5.0 (col. 9, lines 25-29), per the requirements of instant claims 1-7 and 10. It is further taught by Massaux et al that the polyethylene powder has a particle size of 200 microns (col. 9, lines 14-17), per the requirements of instant claims 8-9, and that the liquid crystal composition is used to clean hard surfaces, such as vitreous, wash bowls, bathtubs and tiling (col. 2, lines 36-40 & col. 4, lines 15-20) by applying the composition to the hard surface (col. 10, lines 15-25), per the requirements of instant claim 11. Therefore, instant claims 1-11 are anticipated by Massaux et al, U.S. Patent No. 5,849,105.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The examiner makes of record that all of the documents cited in the Background Of The Invention portion of the instant specification, except JP 06-033414 B2, have been considered. The examiner was unable to obtain a copy of the JP 06-033414 B2 document.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (**Before Final**) and (703) 872-9311 (**After Final**).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM

Brian Mruk  
October 28, 2002

Brian P. Mruk  
BRIAN P. MRUK  
PATENT EXAMINER  
TECH CENTER 1700